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Attorneys for Defendants,
 TOTAL VEIN SOLUTIONS, LLC

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TYCO HEALTHCARE GROUP LP d/b/a
 VNUS MEDICAL TECHNOLOGIES,

Plaintiff/Counter-defendants,

v.

BIOLITEC, INC., DORNIER MEDTECH
 AMERICA, INC., and NEW STAR LASERS,
 INC., d/b/a COOLTOUCH, INC.,

Defendants/Counterclaimants.

LEAD CASE NO. C08-3129-MMC
 (Consolidated Case No. C08-4234-MMC)

STIPULATION AND ~~PROPOSED~~
ORDER REGARDING
CLARIFICATION OF ORDER ON
PLAINTIFF'S MOTION TO STRIKE
DEFENDANT TOTAL VEIN
SOLUTIONS, LLC'S EXPERT
REPORTS

Judge: Hon. Maxine M. Chesney

TYCO HEALTHCARE GROUP LP d/b/a
 VNUS MEDICAL TECHNOLOGIES,

Plaintiff/Counter-defendants,

v.

TOTAL VEIN SOLUTIONS, LLC, d/b/a
 TOTAL VEIN SYSTEMS,

Defendant/Counterclaimants.

1 WHEREAS, Defendant Total Vein Solutions, LLC d/b/a Total Vein Systems (“TVS”)
2 submitted expert reports of both Dr. Wayne Gradman (“Gradman”) and David Draper (“Draper”) on
3 May 7, 2010;

4 WHEREAS, Plaintiff Tyco Healthcare Group LP d/b/a VNUS Medical Technologies
5 (“VNUS”) objected to certain portions of the Gradman and Draper reports as containing untimely
6 opinions on enablement issues;

7 WHEREAS, TVS asserted that such opinions were timely in that said portions of the reports
8 rebutted VNUS’s own infringement expert report;

9 WHEREAS, in accordance with the Local Rules and governing court orders, VNUS and
10 TVS submitted a joint statement to Magistrate Judge James Larson concerning the expert discovery
11 dispute on May 25, 2010 (Docket No. 174);

12 WHEREAS, on June 29, 2010, Magistrate Judge Larson issued an order stating “it is hereby
13 ordered that the TVS expert reports of Dr. Gradman and Dr. Draper are stricken, and TVS is
14 precluded from relying on them in motions or at trial.” (Docket No. 196);

15 WHEREAS, VNUS only sought a court order striking the portions of the Gradman and
16 Draper reports relating to enablement issues and precluding TVS from relying on such opinions;

17 WHEREAS, the Court’s June 29th order does not specify that only the enablement portions of
18 the Gradman and Draper opinions were struck;

19 NOW THEREFORE, it is hereby stipulated and agreed by the respective parties by and
20 through their counsel of record that TVS is not precluded from relying on the portions of the
21 Gradman and Draper reports relating to non-infringement and testimony regarding the non-
22 infringement opinions disclosed in said reports either in motions or at trial.
23

24 [Signatures on following page].

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1 Dated: July 15, 2010

Respectfully Submitted,

2 BUCHE & ASSOCIATES, P.C.

3
4 By: /s/ John Karl Buche

5 John Karl Buche (SBN 239477)

6 Sean M. Sullivan (SBN 254372)

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9 ATTORNEYS FOR DEFENDANT TOTAL
10 VEIN SOLUTIONS, LLC d/b/a TOTAL VEIN
11 SYSTEMS

12 Dated: July 15, 2010

DAVIS POLK & WARDWELL LLP

13 By: /s/ Chung G. Suh

14 Matthew B. Lehr (SBN 213139)

15 Suong T. Nguyen (SBN 237557)

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19 ATTORNEYS FOR PLAINTIFF TYCO
20 HEALTHCARE GROUP LP d/b/a VNUS
21 MEDICAL TECHNOLOGIES

22 I hereby attest that I have on file written (or e-mail) permission to sign this stipulation from
23 all parties whose signatures are indicated by a "confirmed" signature (/s/) within this e-filed
24 document.

25 Dated: 07/15/10

/s/ John K. Buche

John K. Buche

26 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27 Dated: July 27, 2010


HON. JAMES LARSON

U.S. MAGISTRATE JUDGE

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 TOTAL VEIN SOLUTIONS, LLC

UNITED STATES DISTRICT COURT
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TYCO HEALTHCARE GROUP LP d/b/a
 VNUS MEDICAL TECHNOLOGIES, INC.,

 Plaintiff,

 v.

 BIOLITEC, INC., DORNIER MEDTECH
 AMERICA, INC., and NEW STAR LASERS,
 INC. d/b/a COOLTOUCH, INC.,

 Defendants.

LEAD CASE NO. C08-03129 MMC
 (Consolidated Case No. C08-04234 MMC)
PROOF OF SERVICE

TYCO HEALTHCARE GROUP LP d/b/a
 VNUS MEDICAL TECHNOLOGIES, INC.,

 Plaintiff,

 v.

 TOTAL VEIN SOLUTIONS, LLC d/b/a
 TOTAL VEIN SYSTEMS,

 Defendant.

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, John Karl Buche, declare:

I am over the age of 18 years and not a party to this action. My business address is 875 Prospect, Suite 304, La Jolla, California 92037, which is located in the county where the service described below occurred.

On Thursday, July 15, 2010, at La Jolla, California, I served the following documents entitled:

- **STIPULATION AND [PROPOSED] ORDER REGARDING CLARIFICATION OF ORDER ON PLAINTIFF'S MOTION TO STRIKE DEFENDANT TOTAL VEIN SOLUTIONS, LLC'S EXPERT REPORTS**

in the following manner:

I hereby certify that on Thursday, July 15, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to the following individual(s):

Attorneys for Plaintiff/Counter-defendant Tyco Healthcare Group LP d/b/a VNUS Medical Technologies, Inc.:

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Attorneys for Defendant/Counter-claimant Dornier Medtech America, Inc.:

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1 Attorneys for Defendant/Counter-claimant New Star Lasers, Inc, d/b/a Cooltouch, Inc.:

2 Allan W. Jansen (ajansen@orrick.com)
3 James W. Geriak (jgeriak@orrick.com)
4 ORRICK, HERRINGTON & SUTCLIFFE, LLP
5 4 Park Plaza, Suite 1600
6 Irvine, CA 92614-2558

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct.

9 Executed on Thursday, July 15, 2010, at La Jolla, California.

10 /s/ John Karl Buche
11 JOHN KARL BUCHE
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